

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BYRON K. BROWN,
Plaintiff,

v.

ANTHONY ANNUCCI, Commissioner;
MICHAEL CAPRA, Superintendent; F.
CARABALLO, Correctional Sergeant; J.
AYALA, Correctional Officer; S. AMARO,
Correctional Officer; V. YOUNG, Registered
Nurse; K. GREEN, Correctional Officer; T.
BOWEN, Correctional Officer; M. BARNES,
Correctional Captain; "RODRIGUEZ" JOHN
DOE, Correctional Officer; JOHN DOE,
Correctional Officer; M. ROYCE, Deputy
Superintendent of Security; D.
VENNETTOZZI, Director of Special
Housing; and L. MALIN, Deputy
Superintendent of Programs,
Defendants.
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DOC #

DATE FILED: 1/22/20

THIRD AMENDED
ORDER OF SERVICE

19 CV 9048 (VB)

Briccetti, J.:

Plaintiff, who is proceeding pro se and in forma pauperis, commenced this action by filing a complaint dated September 25, 2019, alleging defendants violated his constitutional rights. (Doc. # 2).

On October 29, 2019, the Court issued an Order of Service directing service of the complaint on twelve identified defendants. (Doc. #5). The Order of Service further directed the New York State Attorney General, by December 30, 2019, to ascertain and identify the two John Doe defendants named in the complaint—Correction Officers John Doe and "Rodriguez" John Doe—so that they may be served. (Id.).

Plaintiff filed an amended complaint dated November 13, 2019. (Doc. #7). The amended complaint named and identified an additional defendant, but also contained the same

allegations against John Doe and “Rodriguez” John Doe as stated in the original complaint.

(Id.). On November 8, 2019, the Court issued an Amended Order of Service to effectuate service on the newly named defendant. (Doc. #8). This Order noted the New York Attorney General’s obligation to ascertain and identify John Doe and “Rodriguez” Doe Joe remained in effect. (Id. at 1–2).

By letter dated December 27, 2019, pursuant to Valentin v. Dinkins, 121 F.3d 72 (2d Cir. 1997), the New York State Attorney General identified defendant “Rodriguez” John Doe as Sing Sing Correction Officer David O. Rodriguez. (Doc. #21). Accordingly, on December 30, 2019, the Court issued a Second Amended Order of Service to effectuate service on David O. Rodriguez. (Doc. #23). On January 21, 2020, defense counsel filed a notice of appearance on behalf of same. (Doc. #26).

However, the Attorney General’s Office was unable to ascertain the identity of the remaining John Doe defendant based on the allegations in the amended complaint. (Doc. #21). Accordingly, the Second Amended Order of Service instructed plaintiff to provide a more detailed description of the John Doe defendant, so that this defendant can be identified and served. (Doc. #23 at 3).

By letter dated January 12, 2020, plaintiff states that “there has been a mistake with the identity or identification of defendant ‘Rodriguez’ John Doe.” (Doc. #27). Specifically, plaintiff states the correct defendant is “Carlos J. Rodriguez,” not David O. Rodriguez, who had nothing to do with the alleged events giving rise to plaintiff’s claims. (Id.).

Plaintiff’s letter further provides a more detailed description of the remaining John Doe defendant. (Doc. #27). Plaintiff states this defendant is Hispanic, with dark brown hair, and approximates the defendant’s weight as 215–250 lbs., and height as 5’8”–5’10”. (Id.).

I. Defendant “Rodriguez” John Doe

Because plaintiff now identifies “Rodriguez” John Doe as Sing Sing Correction Officer Carlos J. Rodriguez, the Court will direct the Clerk to terminate David O. Rodriguez as a defendant in this case, and to add Carlos J. Rodriguez to the docket as a defendant.

In addition, to allow plaintiff to effect service on defendant Carlos J. Rodriguez through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form (“USM-285 form”) for this defendant. The Clerk of Court is further instructed to issue a summons listing this defendant and deliver to the Marshals Service all of the paperwork necessary for the Marshals Service to effect service upon this defendant. The service address for this defendant is appended to this Order.

It is plaintiff’s responsibility to ensure that service is made within 90 days of the date the summons is issued and, if necessary, to request an extension of time for service. See Meilleur v. Strong, 682 F.3d 56, 63 (2d Cir. 2012).

II. Defendant John Doe

As noted above, plaintiff describes the remaining John Doe defendant as Hispanic, with dark brown hair, roughly 215–250 lbs., and 5’8”–5’10” in height.

Accordingly, the New York State Attorney General is ordered to ascertain the identity and badge number of this defendant and the address where this defendant may be served. The Attorney General’s Office must provide this information to plaintiff and the Court by February 12, 2020.

CONCLUSION

By February 12, 2020, the Attorney General's Office must notify plaintiff and the Court of the identity and badge number of the remaining John Doe defendant.

The Clerk is directed to (i) terminate from the docket defendant David O. Rodriguez, and (ii) add Sing Sing Correction Officer Carlos J. Rodriguez to the docket as a defendant.

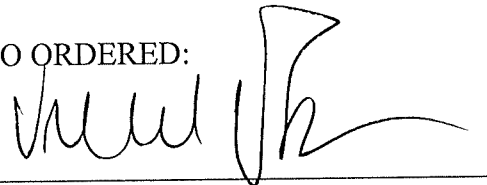
The Court also directs the Clerk of Court to complete the USM-285 form with the address for the listed defendant and deliver all documents necessary to effect service on this defendant to the U.S. Marshals Service.

The Clerk shall mail a copy of this Order to plaintiff at the address on the docket.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith, and therefore in forma pauperis status is denied for the purpose of an appeal. Cf. Coppedge v. United States, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

Dated: January 22, 2020
White Plains, New York

SO ORDERED:

A handwritten signature in black ink, appearing to read 'Vincent L. Briccetti', written over a horizontal line.

Vincent L. Briccetti
United States District Judge

APPENDIX

1. Correction Officer Carlos J. Rodriguez
Sing Sing Correctional Facility
354 Hunter Street
Ossining, New York 10562